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BEFORE THE

Federal Communications Commission

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WASHINGTON, D. C. 20554

AUG 3 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Odessa and Los Ybanez, Texas))

MM DOCKET NO. 94-72
RM-8479

To: Chief, Policy and Rules Division
Mass Media Bureau

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**COMMENTS AND COUNTERPROPOSAL OF
NEW FRONTIER COMMUNICATIONS, INC.**

New Frontier Communications, Inc., by its attorneys, hereby opposes the scheme for a change in the frequency and channel class of unbuilt FM station KADM, Odessa, Texas set forth in the Petition for Rule Making filed by Ruben Velasquez. The petition is the subject of a Notice of Proposed Rule Making and Order to Show Cause ("Notice"), DA 94-709, released July 8, 1994, in the above-captioned proceeding.

Ruben Velasquez is the permittee of station KADM. He applied for and received a grant of the construction permit for this station with full knowledge of the defects in the ability of a station on Channel 299C2 to cover Odessa when he filed for the frequency.

To the extent that Mr. Velasquez is complaining of the inadequacy of coverage using the existing Channel 299C2 allotment, he has no cause to complain since no one forced him to file for

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this allotment. In his Petition, Mr. Velasquez has admitted that the allotment does not meet the Commission's essential criteria, in that it does not offer the ability to cover all or even eighty percent of the proposed city of license with a minimum 70 dBu signal. The situation is even worse than he states, because of a major terrain obstruction -- a "cap rock" formation -- between KODM's authorized site and Odessa. Thus, Channel 299C2 never should have been allotted to Odessa in the first place.

Under the circumstances, a better use of the frequency would be a relocation to a community such as Crane, Texas that could be served from a tower located within the fully spaced site zone for Channel 299C2. Alternatively, the Channel 299C2 allotment should be deleted altogether.

New Frontier Communications, Inc. recently purchased FM station KODM, Odessa, Texas, which historically was authorized to operate on Channel 250C. Due to various problems encountered by the prior licensee, it appears that appropriate steps may not have been taken to preserve the station's permit for Channel 250C. New Frontier Communications, however, desires to build full Class C facilities for KODM. It plans to file an application requesting reinstatement of the KODM construction permit.

In addition, to the extent that it may be necessary in order to establish KODM's ability to repair Class C status, New Frontier Communications, Inc. hereby further requests, as a counterproposal to the plan set forth in the Notice, that the channel class of KODM be upgraded to Channel 250C. New Frontier Communications,

Inc. will file whatever applications are necessary to effectuate that upgrade, including an application on Form 301 in the event that the Commission does not simply grant its application to reinstate the permit. Further, New Frontier Communications will, if authorized, construct such facilities in order to improve its service to the greater West Texas area.

From an antenna located at 31° 39' 34" N. Lat., 102° 17' 38" W. Long. KODM would provide service to 216,055 people.¹

An independent basis for denial of the Velasquez proposal, and grant of New Frontier Communication's counterproposal, is the disruption that would be caused to KYMI, Los Ybanez, Texas by the Velasquez upgrade. KYMI is the only station licensed to Los Ybanez. As shown in the Response to Order to Show Cause filed August 29, 1994 by Israel Ybanez, KYMI has never operated at a profit. The proposed change in its frequency to the middle of the dial would result in the loss of the clear identity which the station now has. Such a disruption in service to which the public has become accustomed could well be fatal to a struggling enterprise such as KYMI. The fact that Mr. Velasquez would have

1 This information is taken from the construction permit application of New Frontier's predecessor, East West Broadcasting Company, Ltd. This represents a substantial increase over the population presently encompassed within the 1 mV contour of KODM. That figures is from 1980 Census, and undoubtedly the 1990 Census would reflect additional population. That population is for a minimal Class C facility of only 300 meters, as was proposed in the former construction permit. However, with a maximum Class C facility of 600 meters, the areas and populations served would be far greater.

to pay for a new crystal for KYMI's transmitter is small comfort against that dismal prospect.

Thus, on the one hand, the Commission has the opportunity to improve existing, solid service offered by KODM, and to preserve the operation of the only station in Los Ybanez, or of injuring KODM and KYMI (possibly causing the loss of Los Ybanez' only broadcast outlet), in order to rescue a flawed allotment for Odessa. Odessa, with ten stations, is a city which already has ample local transmission outlets.

An independent basis for denying the requested upgrade is the dubious state of Mr. Velasquez' compliance with the Commission's multiple ownership rules. In addition to being the permittee of station KADM, Mr. Velasquez controls L&T Enterprises, Inc., licensee of AM station KNDA, Odessa, Texas. New Frontier believes that, in reality, he also controls AM station KOZA, which operates on 1230 kHz, also in Odessa. KOZA is licensed to Mesa Entertainment, Inc., licensee of AM station KOZA, Odessa, Texas. Mesa Entertainment, Inc. is also the licensee of AM station KERB and FM station KERB-FM, in nearby Kermit, Texas. All three of the latter stations simulcast.

The stock in Mesa Entertainment, Inc. is held by the Velasquez Children Trust, whose beneficiaries are the children of Ruben Velasquez. Ostensibly, the trustee of the Trust is Agustin F. Mesa, Jr. However, Mr. Mesa's independence from Ruben Velasquez is highly questionable.

As shown by the attached excerpt from Mesa Entertainment, Inc.'s January 12, 1989 Request for Waiver of Section 73.3555(a)(1), Messrs. Velasquez and Mesa were originally business partners in this venture. Mr. Velasquez is the partner with superior broadcast experience. Under these circumstances, it defies credulity to assume that Mr. Mesa exercises sole control over the operations of KOZA and KERB. This problematic multiple ownership situation will only be exacerbated if the proposed upgrade is permitted.

The station which Mr. Velasquez owns openly, KNDA, does not provide the Commission with any assurance that Mr. Velasquez will be able to fulfill his commitment to construct facilities for station KADM on Channel 300C1 (or, for that matter, on any other channel). KNDA is presently in bankruptcy. See Exhibit 2. According to the documents in the bankruptcy file, there is no prospect that there will be any money for unsecured creditors of KNDA. That being the case, a substantial question of fact is raised whether the Velasquez proposal, if adopted, would be capable of effectuation.²

² The Commission does not normally consider the financial qualifications of rulemaking proponents. However, in this case, Mr. Velasquez stands rather in the status of one who is seeking a new authorization ab initio. He has essentially admitted that the facilities he applied for are not viable. Now he wants the opportunity to frustrate the plans of broadcasters who have demonstrated their ability to serve the public by proposing construction of an entirely different facility than was originally proposed for KADM.

The proper course is not to interfere with the efforts of existing broadcasters to continue their present operations and to improve service, but rather to delete the unbuilt Channel 299C2 allotment altogether, or to move it to a community better deserving of this allotment.

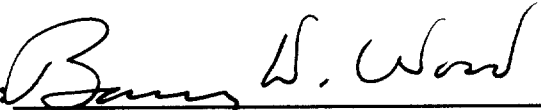
In view of the foregoing, New Frontier Communications, Inc. requests that the Commission reject the petition for rulemaking filed by Ruben Velasquez, and that it amend the FM Table of Allotments as follows:

<u>Option I</u>		
	Channel No.	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Odessa, Texas	241C2, 245C1, 250C1, 256C, 299C2	241C2, 245C1, 250C, 256C
Los Ybanez, Texas	300C2	300C2
<u>Option II</u>		
Odessa, Texas	241C2, 245C1, 250C1, 256C, 299C2	241C2, 245C, 250C
Crane, Texas		299C2

No changes should be made in the present allotment of Channel
300C2 to Los Ybanez, Texas.

Respectfully submitted,

NEW FRONTIER COMMUNICATIONS, INC.

By 

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August 31, 1994

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In The Matter of)
Application of)
MESA ENTERTAINMENT, INC.)
Station KOZA (AM))
Odessa, Texas)
For Commission consent to)
Assignment of license)

FCC File No.
BAL-890106 EA

To: The Chief, Mass Media Bureau

JAN 12 1989

AM BRANCH

REQUEST FOR WAIVER OF SECTION 73.3555(a)(1)

Mesa Entertainment, Inc. ("Mesa"), a 100 percent minority-owned enterprise and proposed assignee of the license of AM Station KOZA, Odessa, Texas, hereby respectfully requests a waiver of the "duopoly" provisions of Section 73.3555(a)(1) of the Commission's rules, to permit its President to hold an attributable ownership interest in AM Station KJJT, Odessa, Texas. In support of this request the following information is provided.

A waiver of the Commission's duopoly rule is requested in order to return a long-silent AM radio station to the air and to operate it in an economically efficient manner, with a specialized, minority-directed program format. KOZA, the license of which is proposed to be assigned to Mesa, was unable to sustain its operations and has been off the air since May 1986. KJJT, in which Mesa's President is an

officer, director and stockholder, has successfully operated an Hispanic-language program format since 1980, serving the substantial Hispanic community. Mesa's President is a prominent Hispanic businessman and has been responsible for the successful operation of KJJT as a business enterprise. His involvement in Mesa will assure the successful operation of KOZA. Given the significant disparity in the facilities of the two stations -- KOZA is authorized to operate fulltime with 1.0 kW; KJJT operates daytime-only with 250 watts -- and given that KOZA, even with facilities superior to KJJT's, has been unable to sustain its operations, divestiture of the attributable interest in KJJT would doom KJJT to the same economic fate which befell KOZA. The interest holder's business backing in both stations is a necessity in order to assure both stations' future viability and service to the public.

Mesa is a Texas corporation owned by five Hispanic individuals.^{1/} Mesa's President, Mr. Ruben Velasquez, holds an interest in KJJT which is attributable to Mesa under the Commission's ownership rules. He is a successful

^{1/} They are Augustine G. Mesa (50%, and Vice President and a Director), DeAnna Velasquez (12.5%), Rebecca Velasquez (12.5%), Ruben Velasquez, Jr. (12.5%), and Benjamin Velasquez (12.5%). The Velasquezes are siblings. Their father, Ruben Velasquez, is President and a Director of Mesa, and their mother, Dorothy Velasquez, is Secretary-Treasurer and a Director.

Odessa businessman and prominent member of the substantial Hispanic community in Odessa. Mr. Velasquez founded, and is president and majority stockholder of Midessa Industrial Vinyl Company, to which he devotes most of his time.^{2/} Mr. Velasquez's interest in the development of productive enterprises which serve primarily the Hispanic community resulted in Mesa's contracting to acquire the license of Station KOZA.

Mr. Velasquez's involvement in broadcasting began in 1986, when he acquired a 75 percent interest in L & T Enterprises, Inc., the licensee of AM Station KJJT in Odessa. KJJT is a 250-watt daytime-only station which operates on the frequency 1000 kHz. It has served the Hispanic population of the community since it signed on the air in 1980. When, in 1985, the stock of the licensee was foreclosed upon by a creditor bank, Mr. Velasquez stepped in as a viable business backer for the ailing facility. KJJT has successfully served the Hispanic community ever since, albeit with its limited technical facilities. Mr. Velasquez does not manage KJJT, nor is he involved in the broadcasting or programming elements of the enterprise. His participa-

^{2/} Midessa Industrial Vinyl Company fabricates and installs linings for the waterproofing of earth ponds which are used for various purposes such as drinking water, sewage and industrial waste. The company was formed in 1978 and contracts for services throughout the United States.

tion in the company has been focused upon the business aspects of the operation. Responsibility for day-to-day affairs has been delegated to the station's general manager.

Station KOZA is a Class IV AM station licensed to operate on 1230 kHz with 1.0 kW fulltime. A casualty of both recessionary market conditions in Odessa and the general demise in the popularity of AM radio, KOZA suffered severe financial losses over a period of years and in May 1986 it went silent.^{3/} KOZA remains off the air to date. The station has the potential to significantly improve broadcast services to the Hispanic community beyond that which KJJT is presently limited to providing with its 250 watt daytime-only facilities. Moreover, industry observers and experts agree that the future economic success of AM radio depends in large measure upon its ability to attract specialized audience support.

Mr. Velasquez's success with KJJT led to his participation in Mesa and the proposed assignee's acquisition of KOZA.^{4/} His business management expertise provides strong

^{3/} The Odessa area has been subjected to a severe economic recession for the past several years, due to its dependence upon the petroleum and petroleum-related industries. There have been six bank failures in the community during this period.

^{4/} Mesa's principal stockholder, Augustine G. Mesa, is Vice President and a minority stockholder in Midessa Industrial Vinyl Company. The KOZA application represents his initial entry into broadcasting.

assurance that KOZA can return to the air and deliver an economically healthy broadcast service. At the same time, however, the divestiture of his interest in KJJT which the duopoly rule mandates would deprive KJJT of the benefit of that continuing expertise. The subsequent likelihood is great that KJJT's economic health would be threatened: absent capable business leadership, direction and backing, substantial doubt exists that a 250-watt daytimer can continue profitably to operate since KOZA, despite its comparatively superior, 1.0 kW fulltime facilities, was forced to go silent.—5/

Mesa plans to return KOZA to the air with an Hispanic programming format, as an additional outlet for the Hispanic community.—6/ Mesa proposes as an unequivocal necessity for the economic survival of KOZA the sharing of staff with KJJT. It plans to contract with KJJT to supply personnel, and may in the future share offices and studios as well.—7/ It is the proposed assignee's judgment that only in this way

5/ The Commission has waived the one-to-a-market rule in consideration of technical facilities; in one case specifically upon the basis, inter alia, that the 250-watt night time facilities of a Class IV AM station served little more than the community proper. Dr. Harry B. Auerbach, 20 RR2d 781 (1970).

6/ Two other market stations also program to the Hispanic community, KOYL(AM), Odessa, and KWEL(AM), Midland.

7/ The KOZA physical facilities are located across the street from KJJT's offices and studios in Odessa.

CERTIFICATE OF SERVICE

I, V. Frappier, hereby certify that I have, this 31st day of August, 1994, caused to be sent by U.S. first-class mail, postage prepaid, a true and correct copy of the foregoing "Comments and Counterproposal of New Frontier Communications, Inc." to the following:

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